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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1944

No. 1147

MARJORIE HAIR BURTON, individually and as  
administratrix of the estate of Frederic A. Burton,  
deceased,

*Petitioner,*

*vs.*

FREEMAN COAL MINING CORPORATION, a corpora-  
tion, WILLIAM J. KRUGLY and MATERIAL  
SERVICE CORPORATION, a corporation,

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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JOHN J. DOWDLE,  
*Attorney for Petitioner.*

CHARLES H. BORDEN,  
*Of Counsel.*



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*Respondents.*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
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*To the Honorable Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your petitioner Marjorie Hair Burton, individually and  
as Administratrix of the estate of Frederic A. Burton,  
deceased,\* respectfully prays that a writ of certiorari

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\* Fred A. Burton, Defendant-Appellant below, died during  
the pendency of the appeal to the Supreme Court of Illinois  
and Marjorie Hair Burton, Administratrix, as aforesaid, was  
by order of said Court, substituted in his place and stead  
(R. 326).

issue to review a final decree of the Supreme Court of Illinois, the highest court of the State of Illinois, which in affirming a decree of the Circuit Court of Cook County, Illinois, decided that the Circuit Court of Cook County, Illinois, without authorization of the bankruptcy court, had jurisdiction to collect and direct the distribution of property which it determined constituted an asset of a debtor, whose estate was being administered by a court of bankruptcy under Chapter X of the Bankruptcy Act.

A petition for rehearing was filed and after being entertained and considered by the Supreme Court of Illinois, was denied on January 15, 1945 (R. 341) the opinion then being slightly modified (R. 342).

#### SUMMARY AND SHORT STATEMENT OF MATTERS INVOLVED.

This suit stems from proceedings under Chapter X of the Bankruptcy Act, and involves certain lands and leases owned by petitioner (Fred A. Burton) (R. 190, 195) who, prior to September 7, 1938, was President and owner of the Burton Coal Company (R. 100).

The Burton Coal Company and its subsidiary companies\* have been debtors in reorganization under Chapter X of the Bankruptcy Act since September 7, 1938 (R. 17, Pars. 9, 305, 306). A plan of reorganization of the Burton Coal Company was confirmed by the Bankruptcy Court on March 27, 1942 (R. 216, 305). The Plan does not include provisions for the settlement or adjustment of claims belonging to the debtor (Plan R. 275, *et seq.*). Neither does the order of confirmation provide

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\* The Freeman and Seymour Coal Mining Companies were wholly owned subsidiaries of the Burton Coal Company (R. 280) and need not be considered here.

for the retention and enforcement by the Trustee of any claims of the debtor or the estate (Order R. 305, *et seq.*). On April 1, 1942, pursuant to said plan J. Roy Browning, the Trustee (R. 185, 192) transferred property of said debtor to respondent Freeman Coal Mining Corporation (R. 217, 218), a corporation organized for the purpose of acquiring the debtor's property and issuing securities under the Plan (R. 294, 295). On the same day, April 1, 1942, J. Roy Browning, the Trustee, became President of respondent Freeman Coal Mining Corporation (R. 218).

Between September 7, 1938, and April 1, 1942, Browning, as Trustee, paid petitioner (Fred A. Burton) the sum of \$22,451.16 as royalties for the coal mined from petitioner's lands and leases (R. 222, 223).

On June 24, 1942 (R. 1) respondents\* brought this suit in the Circuit Court of Cook County, Illinois (referred to as Circuit Court) to impress a trust upon petitioner's lands and leases in favor of the Burton Coal Company, its stockholders and creditors and to have respondents or one or more of them declared successors in interest to said Burton Coal Company (R. 12(a)(b)). An accounting of royalties received by petitioner is also asked (R. 12(c)).<sup>1</sup>

The verified complaint is signed by J. Roy Browning, as President of the respondent, Freeman Coal Mining Corporation (R. 214) and contains a number of allegations relating to transactions of the Burton Coal Company and of its President, Fred A. Burton, prior to the institution of said reorganization proceedings, but the complaint contains no allegation that the Trustee, J. Roy

\* The decree favors Respondent Freeman Coal Mining Corporation solely (R. 90, 352, 353). The respondents William J. Krugly and Material Service Corporation are not necessary for a consideration of this application.

Browning, by order of the Bankruptcy Court or otherwise transferred to the Freeman Coal Mining Corporation the cause of action upon which this suit is based. In a word, the suit is not brought by an assignee of a trustee in reorganization proceedings.

Upon the trial J. Roy Browning, the Trustee testified (R. 217) that the bill of sale which the court approved as part of the plan of reorganization contained "practically" the same conditions as paragraph 12 of the complaint, which recites that the Trustee on January 15, 1942 made a proposal for the reorganization of the debtor Burton Coal Co. (R. 9, Par. 12). There is no order of the Bankruptcy Court approving the purported bill of sale referred to by Browning, and what purports to be an order of the Bankruptcy Court is in fact the Trustee's petition for approval of certain documents (Plaintiff's Ex. 34, R. 311). Said purported Bill of Sale was not recorded (R. 221, 222). The trustee, J. Roy Browning, then testified that the Court approved the plan of reorganization and amended the plan of consummation (R. 217). There is nothing in this record to show any such action on the part of the Bankruptcy Court. The order confirming the plan of reorganization recites, among other things, that no objections were filed to the plan or to the confirmation of the plan (R. 305, 306).

A chronology of the proceedings had in the Bankruptcy Court appears in Appendix A. Extracts from the Plan of Reorganization appear in Appendix B.

The cause in the Circuit Court was referred to and heard by a Master-in-Chancery who found the issues for the respondents and against the petitioner (R. 72).

Exceptions filed to the Master's amended report were overruled by the Court and the Court entered a decree in accordance with the recommendations of the

Master (R. 90, 95), determining among other things that "Freeman Coal Mining Corporation, be deemed to have succeeded to the rights and interests of said Burton Coal Company, its stockholders and creditors, and of J. Roy Browning as the Trustee duly appointed and qualified in certain proceedings entitled, 'In re Burton Coal Company, Freeman Coal Mining Company and Seymour Coal Mining Company, Consolidated Cause No. 69296 in the District Court of the United States for the Northern District of Illinois'" (R. 92).

From the decree of the Circuit Court petitioner appealed to the Supreme Court of Illinois, which affirmed the decree of the Circuit Court (R. 324).

Upon petition for rehearing petitioner challenged the jurisdiction of the State Court as to the subject matter and the right of a State court to administer part of a debtor estate that was being administered by a court of bankruptcy (R. 330).

The petition for rehearing was denied January 15, 1945 (R. 341).

#### JURISDICTION OF THIS COURT TO GRANT CERTIORARI.

The jurisdiction of this Court is invoked under the provisions of Section 237(b) of the judicial code, 28 U.S.C. Section 344(b).

The federal questions sought to be reviewed by this Court were first raised in the trial court by objections filed to the Master's amended report (R. 75-82). The objections standing as exceptions were overruled by the Court and the report and recommendations of the Master were adopted and confirmed (R. 90, 91).

The following findings, among others, are contained in the amended report of the Master and show that the Federal questions were presented, were necessarily involved, were considered and decided adversely.

"The defendants argue that the failure of Browning, as trustee in the reorganization proceedings to file the suit against them precludes the filing of the suit by plaintiffs in the instant suit. The Master finds, in this connection, that no failure of Browning, as trustee in the reorganization proceedings, to file suit, could prejudice the rights of the plaintiffs herein" (R. 67, 68). \*

"The Master is of the opinion, however, that, assuming that Browning did fail to inventory the claim of title to the land in question as an asset of the estate in the Federal Court, and did not bring it to the attention of the court and the creditors in those proceedings, that Browning's failure to do so, if such is a fact, cannot be attacked collaterally in this suit, and is not available to defendants as a defense to this suit" (R. 69).

A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States asserts a right or immunity under such statutes. In this situation this court has jurisdiction. *Nutt v. Knut*, 200 U. S. 13, 18-19, 26 S. Ct. 216, 50 L. Ed. 348; *Pittsburgh & Railway v. Loan & Trust Co.*, 172 U. S. 493, 507-510, 43 L. Ed. 528, 19 S. Ct. 238.

The Federal questions were then raised in the Supreme Court of Illinois in a petition for rehearing filed by petitioner, which directly challenged the State court's jurisdiction of the subject matter, as follows: "The opinion of the Court fails to take into consideration two fundamental principles: (1) a court of bankruptcy has exclusive jurisdiction over the property and assets of the bankrupt; and (2) suits to recover assets allegedly belong-

ing to the bankrupt estate must be brought by or in the name of the trustee" (R. 330).

This Court has repeatedly held that the act of a tribunal beyond its powers is null and void, and can be attacked at any time, even in the first instant on appeal. (*Campbell v. Porter*, 162 U. S. 478, 40 L. ed. 1044, 16 S. Ct. 871.) And it may not be validated either by waiver or consent. (*Windsor v. McVeigh*, 93 U. S. 274, 23 L. ed. 914.)

Regarding the stage in the proceedings in the State Court at which the federal question might effectively be raised, this court, in the case of *McKay v. Kalyton*, 204 U. S. 458, at 463, 51 L. ed. 566, 27 S. Ct. 346, says:

"True it is that the immunity which was asserted was first claimed in a petition for rehearing, but as the question was raised, was necessarily involved and was considered and decided adversely by the state court, there is jurisdiction. *Leigh v. Green*, 193 U. S. 790." (48 L. Ed. 623, 24 S. Ct. 390.)

Although petitioner does not agree with the conclusion of the Supreme Court of Illinois, the opinion of the Court clearly shows that the Federal issue was presented, was necessarily involved, was considered, and decided adversely. The Supreme Court of Illinois in its opinion says (R. 352):

"The action of the trustee, and his failure to exercise the functions within his power as such trustee, should not be the means of affording Burton and his wife a basis for retention of title to the property as against the claim of the corporation so defrauded."

The Supreme Court of Illinois having thus condemned the Trustee for his failure to discharge a duty imposed upon him by a Federal statute, then assumes jurisdiction to correct what it necessarily considers a defect in the

administration of the bankruptcy laws by the Federal court and in its opinion concludes:

"The evidencee proclaims the fraud practiced upon Burton Coal Company and its creditors, and the findings of the master in chancery, approved by the chancellor, to the effect, among other things, that a trust should be impressed upon the property in favor of the Burton Coal Company, which, in turn, should be deemed to have been conveyed to the Freeman Coal Mining Corporation, one of the plaintiffs, are amply supported by the evidence."

The petition for rehearing was denied January 15, 1945, and this application is made within the three months allowed by 28 U. S. C. 350.

#### CONSTITUTION AND STATUTES INVOLVED.

The sections of the Constitution of the United States and the Federal statutes involved will be found in Appendix.

#### REASONS FOR THE ALLOWANCE OF THE WRIT.

In holding that the Circuit Court, without authorization of the Bankruptcy Court, had jurisdiction to determine the rights of a debtor, its stockholders and creditors in proceedings for corporate reorganization under Chapter X of the Bankruptcy Act, the Supreme Court of Illinois has decided an important Federal question of substance in a way in conflict with the decisions of this Court, including the cases of *Isaacs v. Hobbs Tie and T. Co.*, 282 U.S. 734, 737, 75 L. Ed. 645, 51 S. Ct. 270; *Gross v. Irving Trust Co.*, 289 U.S. 342, 344, 345, 77 L. Ed. 1243, 53 S. Ct. 605; *Brown v. Gerdes*, 321 U.S. 178, 183, 184, 88 L. Ed. 444, 64 S. Ct. 487.

In holding that Respondents, as distinguished from the

Trustee appointed by the Bankruptcy Court, had the unqualified right to institute and prosecute this suit and in directing the distributing of an asset which it determined belongs to a debtor in proceedings for corporate reorganization under Chapter X of the Bankruptcy Act, the Supreme Court of Illinois has decided an important federal question of substance in a manner in conflict with the decisions of this Court and other federal courts, including the cases of *Glenney v. Langdon*, 98 U.S. 20, 25 L. Ed. 43; *Trimble v. Woodhead*, 102 U.S. 647, 26 L. Ed. 290; *Gochenour, et al. v. George & Francis Ball Foundation, et al.*, 35 Fed. Supp. 508, 517, affirmed 117 F. 2nd 259—cert. den. 313 U.S. 566.

#### QUESTIONS PRESENTED.

The following questions are presented by the record in this cause:

1. Whether a court of bankruptcy, whose jurisdiction has been invoked, is given exclusive jurisdiction over all the property and assets of a debtor and the distribution thereof as it directs?
2. Whether suits to recover assets belonging to a debtor estate must be brought by or in the name of the Trustee under the direction of the Bankruptcy Court?
3. Whether a plan of reorganization confirmed by a court of Bankruptcy is conclusive of the property dealt with by the Trustee and binding upon the debtor, its stockholders, creditors and the corporation organized for the purpose of carrying out the plan?

WHEREFORE, your petitioner respectfully prays that this

Petition for a Writ of Certiorari to the Supreme Court  
of the State of Illinois be granted.

MARJORIE HAIR BURTON,

*Petitioner,*

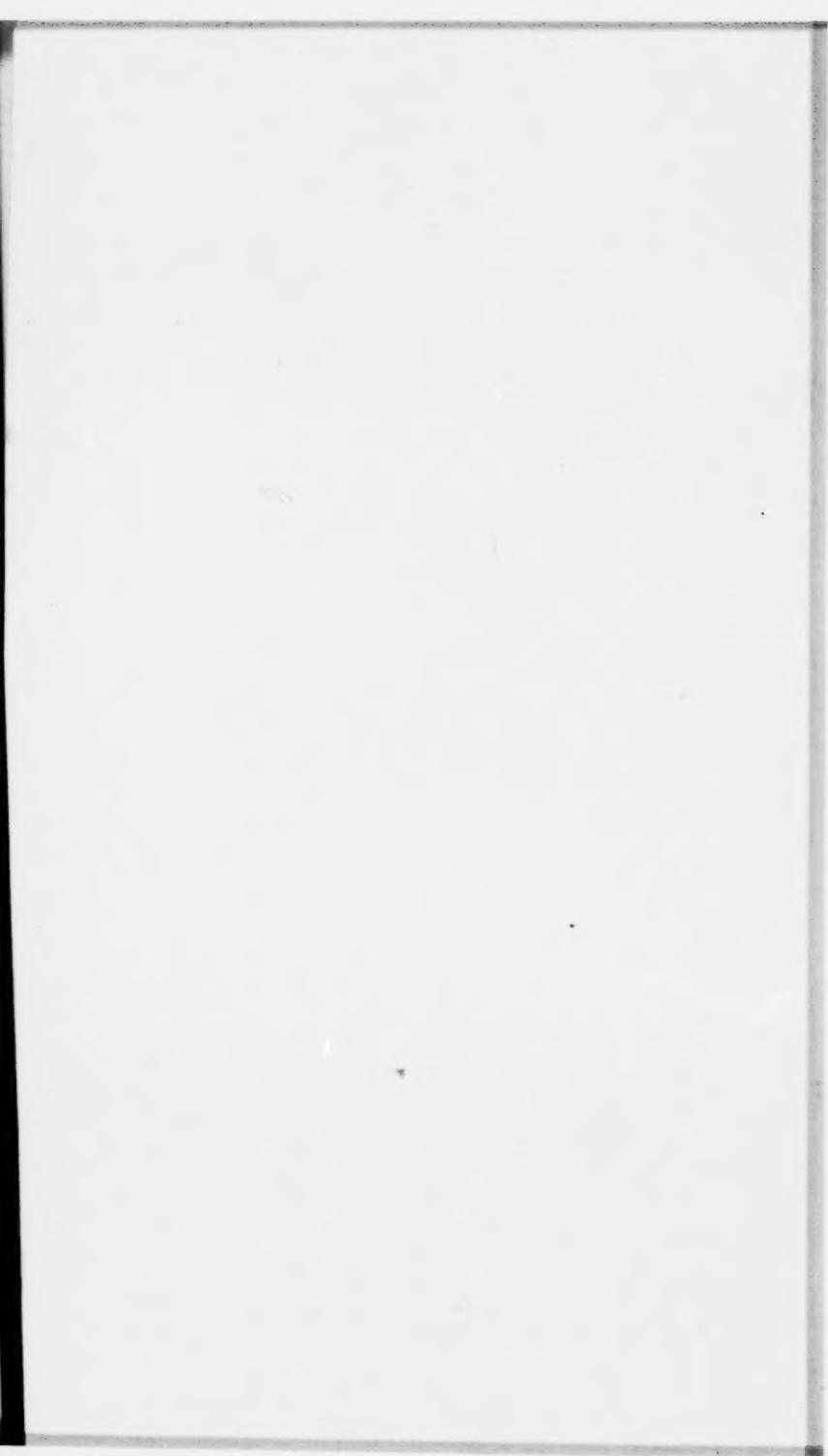
*Individually and as Administratrix  
of the Estate of Frederic A. Burton,  
deceased.*

By JOHN J. DOWDLE,

*Her Attorney.*

CHARLES H. BORDEN,

*Of Counsel.*





## APPENDIX.

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### CONSTITUTION AND FEDERAL STATUTES.

#### *Federal Constitution.*

*Article I, Section 8, Clause 4:* The Congress shall have Power To establish \* \* \* uniform laws on the subject of Bankruptcies throughout the United States.

#### *Article III, Section 2:*

"(First) The judicial power shall extend to all cases, in law or equity, arising under this Constitution. The laws of the United States, \* \* \*."

#### *Federal Statutes.*

Judicial Code, Section 256.  
(28 U. S. C. 371)

### EXCLUSIVE JURISDICTION OF UNITED STATES COURT.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: \* \* \*

Sixth. Of all matters and proceedings in bankruptcy.

#### *Federal Bankruptcy Act.*

##### Chapter I—Definitions.

Section 1, Clause (10): "Courts of bankruptcy" shall include the district courts of the United States \* \* \*.

### CHAPTER II—COURTS OF BANKRUPTCY.

"Sec. 2. Creation of Courts of Bankruptcy and Their Jurisdiction.—a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their

respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, \* \* \*."

"(9) Confirm or reject arrangements or plans proposed under this Act \* \* \*,

"(15) Make such orders, issue such process, and enter such judgments \* \* \* as may be necessary for the enforcement of the provisions of this Act. \* \* \*,

#### CHAPTER IV—COURTS AND PROCEDURE THEREIN.

#### CHAPTER VII—ESTATES.

"See. 70. Title to Property. a. The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy or of the original petition proposing an arrangement or plan under this Act, \* \* \*; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded or sequestered: \* \* \*

"i. Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the arrangement or plan, the title to the property dealt with shall vest in the bankrupt or debtor, or vest in such other person as may be provided by the arrangement or plan or in the order confirming the arrangement or plan."

#### CHAPTER X—CORPORATE REORGANIZATIONS.

##### *Article I—Construction.*

Sec. 101. The provisions of this chapter shall apply exclusively to proceedings under this chapter.

Sec. 102. The provisions of chapters I to VII, inclu-

sive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That section 23, subdivision H and n of section 57, section 64, and subdivision f of section 70 shall not apply in such proceedings. \* \* \*

### *Article III—Jurisdiction and Powers of Court.*

"Sec. 111. Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

\* \* \* \* \*

"Sec. 114. Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication.

"Sec. 115. Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor of the debtor on the ground of insolvency or inability to meet its debts as they mature.

"Sec. 116. Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court—

"(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

"(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; and

"Sec. 149. An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court.

#### "ARTICLE VII—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

"Sec. 167. The trustee upon his appointment and qualification—\*\*\*

"(3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate;

"Sec. 175. Upon the approval of a plan by the judge, the trustee or the debtor in possession shall transmit, by mail or otherwise, to all creditors and stockholders who are affected by any such plan—

"(1) the plan or plans so approved, together with a summary thereof approved by the judge;

"(2) the opinion of the judge, if any, approving the plan, or plans, or a summary thereof approved by the judge;

"(4) such other matters as the judge may deem necessary or desirable for the information of creditors and stockholders.

"Sec. 179. After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 203 of this Act, or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of section 216 of this Act, the judge shall fix a hearing, upon notice to the debtor, creditors, stockholders, indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the judge may designate, for the consideration of the confirmation of the

plan and of such objections as may be made to the confirmation.

"See. 180. The order of the judge approving a plan, as provided in section 174 of this Act, shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan.

**"ARTICLE VIII—TITLE, RIGHTS, AND POWERS OF TRUSTEES  
AND DEBTORS IN POSSESSION.**

"See. 186. A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under section 44 of this Act would have.

"See. 187. Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 44 of this Act, and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor.

"See. 189. A trustee or debtor in possession, upon authorization by the judge, shall operate the business and manage the property of the debtor during such period, limited of indefinite, as the judge may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate.

"See. 190. The reports of the trustee or debtor in possession shall be in such form and contain such information as the court may prescribe and shall at all times be open to the examination of any party in interest. The court shall direct copies or summaries of annual reports, and may direct copies or summaries of other reports, to be mailed to the creditors, stockholders, and indenture trustees, and may also direct the publication of summaries of any such reports in such newspaper or newspapers of general circulation as the court may designate. The Securities and Exchange Commission may recommend the form of such reports and summaries.

"Sec. 191. A trustee or debtor in possession may employ officers of the debtor at rates of compensation to be approved by the court. No person shall become an officer or director of the debtor, to fill a vacancy or otherwise, without the prior approval of the court.

#### "ARTICLE IX—CREDITORS AND STOCKHOLDERS.

"Sec. 197. For the purposes of the plan and its acceptance, the judge shall fix the division of creditors and stockholders into classes according to the nature of their respective claims and stock. For the purposes of such classification, the judge shall, if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the judge may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value.

"Sec. 200. Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, before the approval of the petition, as in a bankruptcy proceeding before adjudication and, upon the approval of the petition, as in a bankruptcy proceeding upon adjudication.

#### "ARTICLE X—PROVISIONS OF PLAN.

"Sec. 216. A plan of reorganization under this chapter—

"(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

"(2) may deal with all or any part of the property of the debtor;

"(4) may provide for the rejection of any executory contract except contracts in the public authority;

"(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose; and

"(14) may include any other appropriate provisions not inconsistent with the provisions of this chapter.

#### "ARTICLE XI—CONFIRMATION AND CONSUMMATION OF PLAN.

"Sec. 221. The judge shall confirm a plan if satisfied that—

"(1) the provisions of article VII, section 199, and article X of this chapter have been complied with;

"(2) the plan is fair and equitable, and feasible;

"(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this Act;

"(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge; and

"(5) the identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, upon the consummation of the plan, have been fully disclosed, and that the appointment of such persons to such offices, or their continuance therein, is equitable, compatible with the interests of the creditors and stockholders and consistent with public policy.

"Sec. 222. A plan may be altered or modified, with the approval of the judge, after its submission for acceptance and before or after its confirmation if, in the opinion of the judge, the alteration or modification does not materially and adversely affect the interests of creditors or stockholders. If the judge finds that the proposed altera-

tion or modification, filed with his approval, does materially and adversely affect the interests of creditors or stockholders, he shall fix a hearing for the consideration, and a subsequent time for the acceptance or rejection, of such alteration or modification. The requirements in regard to notice of hearing, to submission to the Securities and Exchange Commission, to acceptance, to filing and hearing of objections to confirmation and to the confirmation, as prescribed in article VII of this chapter in regard to the plan proposed to be altered or modified, shall be complied with.

"Sec. 223. Any creditor or stockholder who has previously accepted the plan proposed to be altered or modified and who does not file a written rejection of the proposed alteration or modification within the time fixed by the judge, shall be deemed to have accepted the alteration or modification and the plan so altered or modified unless the previous acceptee provides otherwise.

"Sec. 224. Upon confirmation of a plan—

"(1) the plan and its provisions shall be binding upon the debtor, upon every other corporation issuing securities or acquiring property under the plan, and upon all creditors and stockholders, whether or not such creditors and stockholders are affected by the plan or have accepted it or have filed proofs of their claims or interests and whether or not their claims or interests have been scheduled or allowed or are allowable;

"(2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan, including, in the case of a public-utility corporation, the procuring of authorization, approval, or consent of each commission having regulatory jurisdiction over the debtor or such other corporation;

"(3) if the judge shall so direct, there shall be deposited and distributed, in such manner as the judge may direct, the moneys for all payments which by the provisions of the plan or under this chapter are required to be made in cash; and

"(4) distribution shall be made, in accordance with the

provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession as fixed claims or stock, liquidated in amount and not disputed.

"Sec. 225. Where the claims or stock specified in paragraph (4), clause (b), of section 224 of this Act are objected to by any party in interest, the objection shall be heard and summarily determined by the court.

"Sec. 226. The property dealt with by the plan, when transferred by the trustee to the debtor or other corporation or corporations provided for by the plan, or when transferred by the debtor in possession to such other corporation or corporations, or when retained by the debtor in possession, as the case may be, shall be free and clear of all claims and interests of the debtor, creditors, and stockholders, except such claims and interests as may otherwise be provided for in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of such property.

"Sec. 227. The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan.

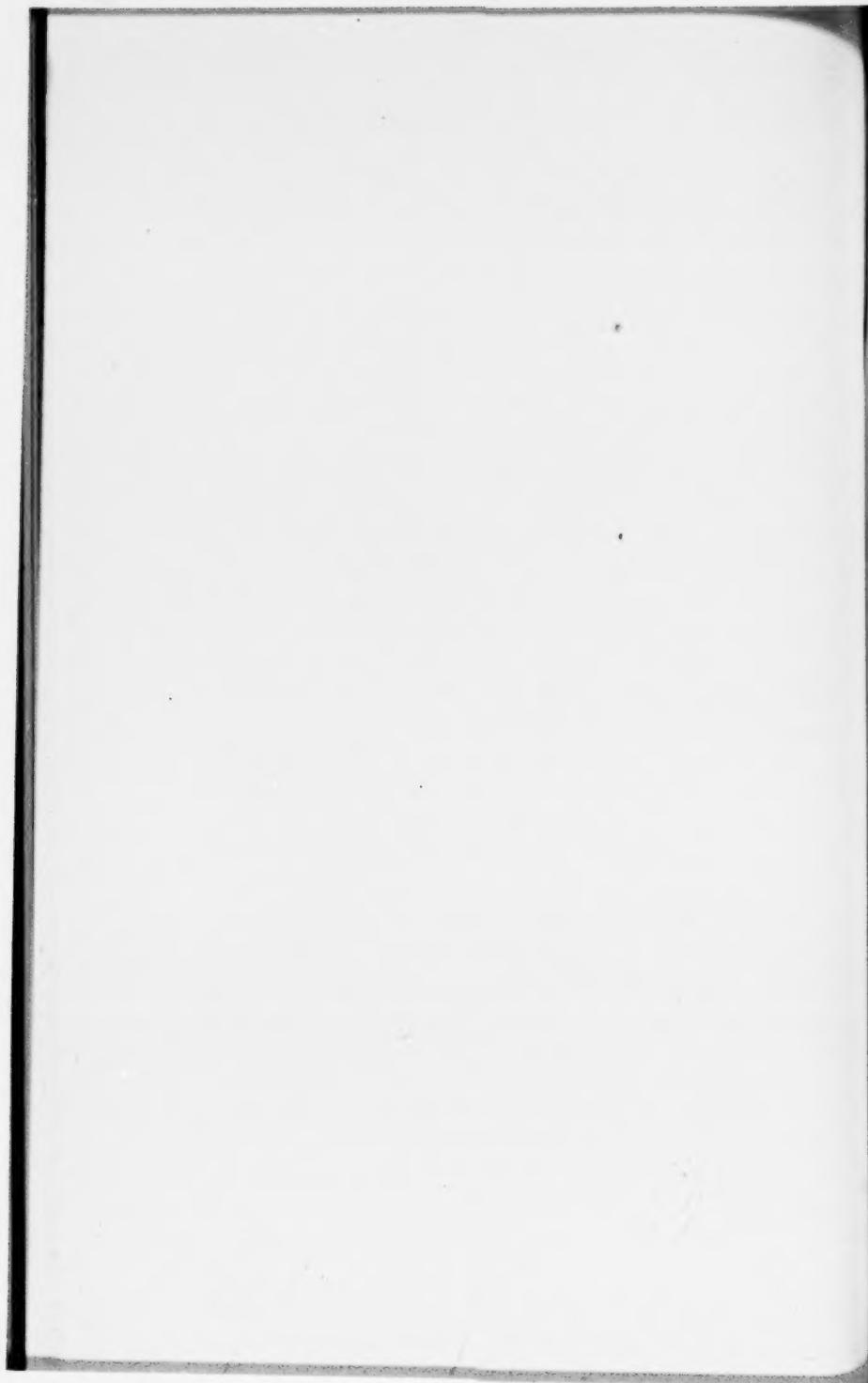
"Sec. 228. Upon the consummation of the plan, the judge shall enter a final decree—

"(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

"(2) discharging the trustee, if any;

"(3) making such provisions by way of injunction or otherwise as may be equitable; and

"(4) closing the estate.



(16)

Offices - Supreme Court, U. S.  
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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1944

No. 1147

MARJORIE HAIR BURTON, individually and as  
administratrix of the estate of Frederic A. Burton,  
deceased,

*Petitioner,*

*vs.*

FREEMAN COAL MINING CORPORATION, a corpora-  
tion, WILLIAM J. KRUGLY and MATERIAL  
SERVICE CORPORATION, a corporation,

*Respondents.*

---

## BRIEF IN SUPPORT OF PETITION

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JOHN J. DOWDLE,  
*Attorney for Petitioner.*

CHARLES H. BORDEN,  
*Of Counsel.*



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### SUMMARY OF ARGUMENT

Under Chapter X of the Bankruptcy Act the Bankruptcy Court is given exclusive jurisdiction of the debtor and its property wherever located.

The Trustee of a debtor estate upon his appointment and qualification is vested by operation of law with title of the debtor and its property wherever located, and suits to recover assets of a debtor in reorganization proceedings must be brought by the Trustee.

Respondents brought this suit individually and not as assignees of the trustee of the debtor Burton Coal Company. The suit was instituted after a plan of reorganization of the debtor Burton Coal Company had been confirmed and consummated. The plan made no provision for the enforcement of claims belonging to the debtor, yet the suit is based upon the cause of action which it is alleged existed in favor of the debtor Burton Coal Company.

The Supreme Court of Illinois in affirming a decree of the Circuit Court of Cook County, Illinois, determined that the State court had jurisdiction of the debtor Burton Coal Company and its property after a conclusive determination by the Bankruptcy Court that the debtor Burton Coal Company and its property were under its exclusive jurisdiction.

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IN THE

# Supreme Court of the United States

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## No.

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MARJORIE HAIR BURTON, individually and as administratrix of the estate of Frederic A. Burton, deceased,

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*vs.*

FREEMAN COAL MINING CORPORATION, a corporation, WILLIAM J. KRUGLY and MATERIAL SERVICE CORPORATION, a corporation,

*Respondents.*

---

## BRIEF IN SUPPORT OF PETITION

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### OPINIONS BELOW.

The opinion of the Supreme Court of Illinois filed November 22, 1944, appears at R. 314.

Upon denial of the petition for rehearing the Supreme Court of Illinois modified its original opinion by deleting therefrom a reference to J. Roy Browning, the Trustee, as follows: "His appointment as President of the Corporation formed to take over the assets of the debtor estates under these circumstances is difficult to understand. In any event" (R. 323).

The modified opinion, filed January 15, 1945, appears at R. 342 and is officially reported in 388 Ill. 604.

**JURISDICTION.**

A statement as to jurisdiction appears in the petition, pages 5-8.

**STATEMENT OF THE CASE.**

A summary statement of the facts is given in the petition, pages 2-5.

**STATUTES INVOLVED.**

The constitutional provisions and the statutes involved are set forth in an appendix attached to the petition.

## ARGUMENT.

Chapter X of the Bankruptcy Act under which the reorganization of the Burton Coal Company was accomplished, expressly confers upon the United States District Court "exclusive jurisdiction of the debtor and its property wherever located." Bankruptcy Act, Chapter X, Sec. 111.

The Congress in the reorganization provisions of the Bankruptcy Act, exercising its paramount bankruptcy power, has provided in Section 149 that an order which has become final, approving a petition filed under this Chapter, shall be a conclusive determination of the jurisdiction of the Court. Constitution of the United States, Article I, Sec. 8, Clause 4. Judicial Code, Section 256, *Gross v. Irving Trust Company*, 289 U. S. 342; *Isaacs v. Hebs Tie & Timber Co.*, 282 U. S. 734.

J. Roy Browning was appointed Trustee of the debtor Burton Coal Company in September 1938 and upon his qualification as such Trustee became vested by operation of law with title to the debtor Burton Coal Company and its property. Bankruptcy Act, Sec. 70, a. The Trustee J. Roy Browning accordingly was the only party plaintiff who might, under the direction of the Bankruptcy Court, lawfully institute and prosecute a suit on behalf of the debtor Burton Coal Company. *Glenny v. Langdon*, 98 U. S. 20, 25; *Trimble v. Woodhead*, 102 U. S. 647.

Respondents in their individual capacity and not as assignees of a Bankruptcy Trustee brought this suit against petitioner, claiming that they succeeded to the rights of the debtor Burton Coal Company, its stockholders and creditors, all of whom it is alleged were aggrieved by

the conduct of petitioner (Fred A. Burton) while President of the Burton Coal Company in the period prior to the institution of the proceedings for the reorganization of said Burton Coal Company. In contemplation of the confirmation and consummation of the plan of reorganization of the Burton Coal Company under Chapter X of the Bankruptcy Act such succession is impossible and its assertion ridiculous. Section 216(13) Bankruptcy Act. The confusion that would result if creditors or stockholders of a debtor in reorganization were permitted to bring independent suits in their own behalf is considered in the case of *Gochenour, et al. v. George & Francis Ball Foundation, et al.*; 35 Fed. Supp. 508, 517, affirmed 117 F. 2nd 260—cert. den. 313 U. S. 566. In that case an independent class action was brought by plaintiffs in their individual capacity on behalf of all the creditors of a bankrupt corporation, alleging that the defendants and officers and directors of the bankrupt corporation entered into a conspiracy which resulted in a loss to the creditors of the bankrupt. The Court, in sustaining a motion to dismiss the suit, says at page 517:

“It is inconceivable that this court has authority to review the finding of the bankruptcy court as to the classification of creditors, yet, that would be the effect if these plaintiffs were permitted to maintain this action, recover judgment, realize upon such judgment and this court make distribution among the special class, as prayed. This would lead to endless confusion, and such proceedings were never contemplated by the Bankruptcy Act. To avoid such confusion, the bankruptcy court is given exclusive jurisdiction over all its assets wherever found, and to make distribution thereof as it directs.”

The respondents in this case go beyond what was attempted by the plaintiffs in the *Gochenour* case, *supra*. This was not a class action and in this case suit was

instituted after the plan of reorganization of the Burton Coal Company had been confirmed by the Judge of the Bankruptcy Court and the rights of the debtor Burton Coal Company, its creditors and stockholders had been determined. The plan is *res judicata*. Bankruptcy Act, See. 224.

We will address ourselves solely to a consideration of respondent,\* Freeman Coal Mining Corporation, the corporation organized for the purpose of acquiring property and issuing securities under the plan (R. 61, 62), and the rationale of the Supreme Court of Illinois in arriving at its conclusion "that a trust should be impressed upon the (petitioner's) property in favor of the (debtor) Burton Coal Company, which, in turn should be deemed to have conveyed to the (respondent) Freeman

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\* It is stated in a note, at page 3 of the petition, that respondents William J. Krugly and Material Service Corporation are not necessary for a consideration of petitioner's application. The basis for this statement is that the master in chancery who heard this cause found that respondents William J. Krugly and Material Service Corporation offered no proof of the allegations relating to them contained in the complaint (R. 51); that they were not necessary parties to the suit and that the respondent Freeman Coal Mining Corporation represented whatever interest they might have in said cause (R. 67).

The Supreme Court of Illinois, however, commenting on the status of William J. Krugly, observes that said Krugly bought the preferred stock of the Burton Coal Company from the Continental Bank and that said Krugly now stands in the shoes of the Continental Bank as a creditor (R. 346). This observation of the Supreme Court of Illinois, and numerous others contained in the opinion of that Court lends emphasis to the wisdom of Congress in conferring upon the courts of bankruptcy exclusive jurisdiction over the bankrupt and its property wherever located and the determination of causes of action available to the estates of debtors.

The Plan provides specifically for the payment of the Continental Bank's claim and recites that said Bank has transferred to Material Service Corporation the securities to which it was entitled by reason of its allowed claim. Appendix B, Article IX, pp. 5, 6, R. 298-299.

Coal Mining Corporation \* \* \*'' (R. 352, 353) (Parenthesis ours)

On April 1, 1942, the Trustee, J. Roy Browning, transferred to said respondent the property of the debtor Burton Coal Company, and on the same day became President of said respondent corporation (R. 218).

We believe that the confusion manifested in the opinion of the Supreme Court of Illinois is attributable, in large measure, to the misleading and erroneous testimony of J. Roy Browning.

J. Roy Browning signed the verified complaint in this case as President of the respondent Freeman Coal Mining Corporation (R. 214). In the complaint J. Roy Browning, the president of respondent corporation alleges that J. Roy Browning, the Trustee of the debtor, was without knowledge of the matters set forth in the complaint relating to the petitioner Fred A. Burton prior to September, 1938 (R. 11).

Leaving aside consideration of petitioner's stock ownership of the Burton Coal Company prior to the institution of the reorganization proceedings in September 1938, and all other considerations and accepting J. Roy Browning's verified statement as true, then it became the Trustee Browning's duty to report to the Bankruptcy Court that a chose in action was available to the estate of the Burton Coal Company. Bankruptcy Act, Section 167.

Under the unbroken sequence of decisions of this Court the administration of such an asset and its distribution is required to be made in accordance with the provisions of the Bankruptcy Act and under the direction of the Bankruptcy Court and not in accordance with notions in respect of its administration and distribution which a State court may entertain.

This Court, in the case of *Prudence Realization Corp. v. Geist*, 316 U. S. 89, 95, says:

"The bankruptcy act prescribes its own criteria for distribution to creditors. In the interpretation and application of federal statutes, federal not local law applies. (Citing cases.) The court of bankruptcy is a court of equity to which the judicial administration of the bankrupt's estate is committed \* \* \*."

This court in the case of *Ecker v. Western Pac. R. Corp.*, 318 U. S. 451, at page 482, cited with approval a quotation from the opinion of the Court written by Mr. Justice Douglas in the case of *Consolidated Rock Co. v. DuBois*, 312 U. S. 510: "Absent the requisite valuation data, the Court was in no position to exercise the 'informed, independent judgment' (*National Surety Co. v. Coriell*, 289 U. S. 426, 436) which appraisal of the fairness of a plan of reorganization entails \* \* \*."

In that case the Court said:

"In the first place, there must be a determination of what assets are subject to the payment of the respective claims."

Illumined by the decisions of this court, can it be said that a corporation organized to acquire property of a debtor corporation under a plan may lawfully institute a suit based upon a chose in action of which the court approving and confirming the plan was not aware?

Mr. Browning, as Trustee, knew that it was necessary for the respondent corporation of which he was president to show authority from the Bankruptcy Court whereby the alleged cause of action against petitioner was transferred to it. Mr. Browning accommodates by testifying that a bill of sale was approved by the Bankruptcy Court as part of the plan of reorganization of the Burton Coal Company; that the Bankruptcy Court approved the plan

of reorganization and amended the plan of consummation; that the bill of sale contained "practically the same condition as Paragraph 12 (R. 9) of the complaint (R. 217). The purported orders of the Bankruptcy Court approving the alleged bill of sale or "amending the plan of consummation" are not in this record and may be presumed to be adverse to the testimony of Mr. Browning. The simple fact is the alleged orders are non-existent.

Upon this testimony of Mr. Browning and the alleged bill of sale which he produced the Master in Chancery found that the purported order of the Bankruptcy Court approving the plan of reorganization of the Burton Coal Co. directed the Trustee to sell all rights which the Trustee " \* \* \* might have asserted against any person by reason of any property held by such person in trust for the several debtors \* \* \*" (R. 51). The order approving the plan of reorganization is not in evidence in this case, and how the Master can quote at length from it is incomprehensible. This court will take judicial notice of the fact that an order approving a plan does not direct the trustee to sell anything not included or dealt with by the plan. The Supreme Court of Illinois misled by this erroneous and baseless finding of the Master amplifies upon it and says (R. 350):

"Initially it is to be observed that the present action is incidental to a conveyance by a trustee, under the direction of a Federal Court in proceedings under the Bankruptcy Act."

The Supreme Court of Illinois then conjures up the reason for the alleged conveyance and says:

"The order of the Federal Court, in turn, has for its basis, among other things, fraud on the part of the Burton Coal Company and of Burton himself, \* \* \*" (R. 350).

The questions raised in this case are an integral part of the administration of a Chapter X proceeding and it is respectfully submitted that the present appeal furnishes an appropriate occasion for the granting of certiorari. See *Emil v. Hanley*, cert. granted 317 U. S. 621, L. Ed. 643; *Fidelity Assurance Asso. v. Sims*, cert. granted 317 U. S. 614; *Gross v. Irving Trust Co.*, cert. granted 288 U. S. 598; *Prudence Realization Corp. v. Geist*, cert. granted 314 U. S. 606.

The Supreme Court of Illinois in affirming the decree of the Circuit Court of Cook County, Illinois, determined that the State Court had jurisdiction of the debtor Burton Coal Company and its property after a conclusive determination by the Bankruptcy Court that the debtor Burton Coal Company and its property were under its exclusive jurisdiction. Bankruptcy Act, Section 149. Such divided control can lead only to confusion and was never heretofore contemplated by any court. It is opposed to all other decisions on the question.

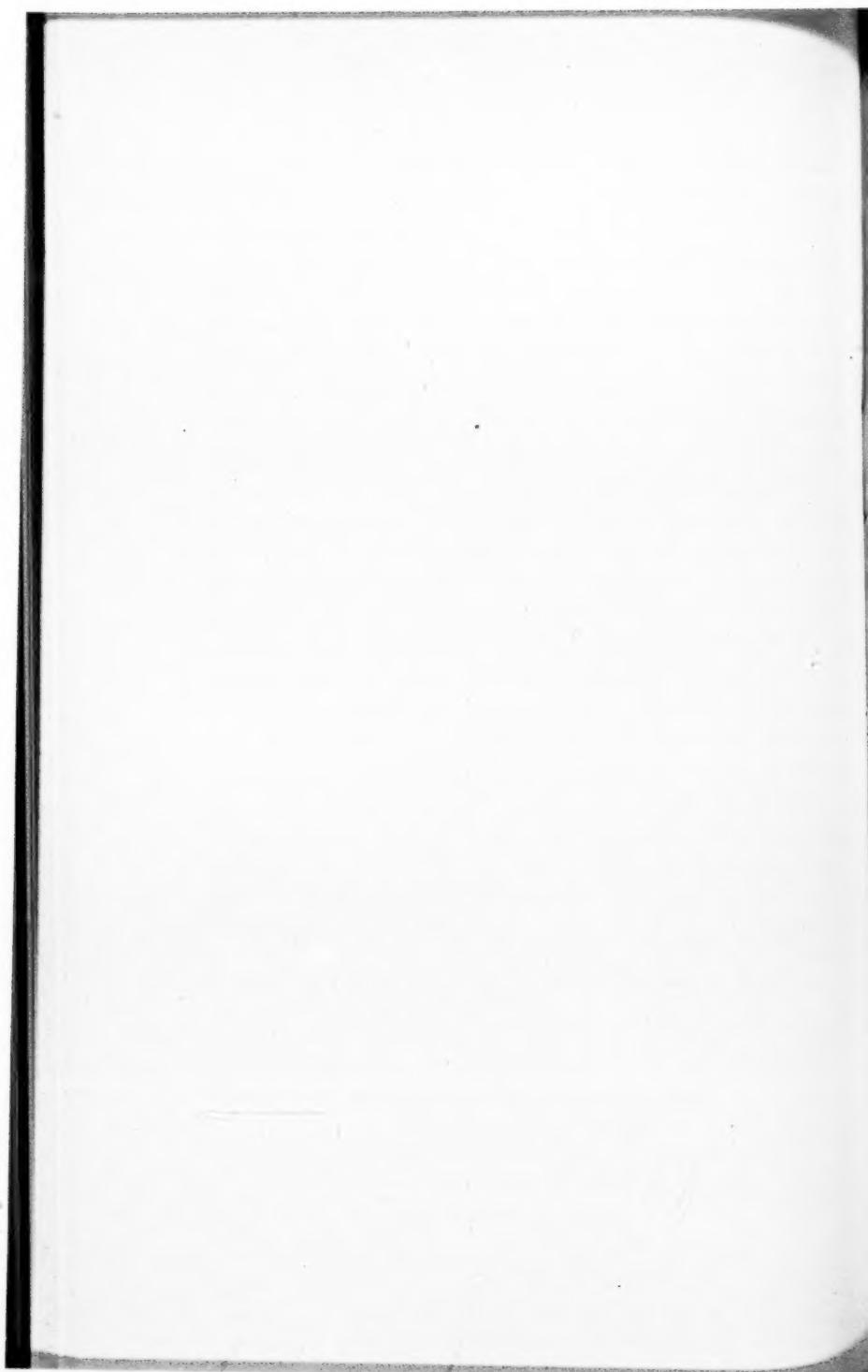
The question is of importance and should be resolved by this Court.

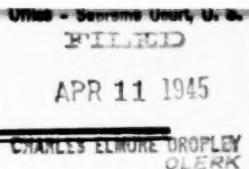
Respectfully submitted,

JOHN J. DOWDLE,  
*Counsel for Petitioner.*

CHARLES H. BORDEN,  
*Of Counsel.*

Dated April 10, 1945.





IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1944

**No. 1147**

MARJORIE HAIR BURTON, individually and as  
administratrix of the estate of Frederic A. Burton,  
deceased,

*Petitioner,*

*vs.*

FREEMAN COAL MINING CORPORATION, a corpora-  
tion, WILLIAM J. KRUGLY and MATERIAL  
SERVICE CORPORATION, a corporation,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF ILLINOIS.

**APPENDICES TO PETITION AND BRIEF**

JOHN J. DOWDLE,  
*Attorney for Petitioner.*

CHARLES H. BORDEN,  
*Of Counsel.*



IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1944

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
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## APPENDICES TO PETITION AND BRIEF

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### APPENDIX A.

---

#### CHRONOLOGY

OF

#### PROCEEDINGS IN THE BANKRUPTCY COURT.

Sept. 7, 1938—Proceedings for the reorganization of  
the Burton Coal Company and its subsidiary companies,  
the Freeman and Seymour Coal Mining Companies, under

Chapter X of the Bankruptcy Act, were instituted in the United States District Court for the Northern District of Illinois, Eastern Division, Consolidated Causes Number 69,296 (R. 17, 305, 306).

Sept., 1938—J. Roy Browning was duly appointed Trustee of said debtor corporations and has ever since and is now acting as such Trustee (R. 185, 195).

Jan. 15, 1942—A plan of reorganization was proposed by said Trustee (R. 275).

Feb. 4, 1942—Said plan of reorganization was approved by the Bankruptcy Court (R. 216).

Feb. 7, 1942—The respondent, Freeman Coal Mining Corporation, an Illinois corporation, was organized (R. 216) for the purpose of acquiring by purchase from the Trustee all of the estate and property of the debtor corporations, pursuant to said plan of reorganization (R. 60, 61). Extracts from the plan appear in Appendix B.

March 27, 1942—An order confirming said plan of reorganization was duly entered by the Judge of said Bankruptcy Court (R. 305).

April 1, 1942—J. Roy Browning, Trustee of the debtor corporations, became President of respondent Freeman Coal Mining Corporation (R. 218).

April 1, 1942—J. Roy Browning, as Trustee, transferred to respondent the assets and property of the debtor corporations dealt with by the plan of reorganization (R. 217, 218).

Between September, 1938 and April 1, 1942—J. Roy Browning as Trustee in said bankruptcy proceedings, paid petitioner (Fred A. Burton) the legal owner of the lands involved in this controversy (R. 190) the sum of \$22,451.16 as rent or royalty for the use of said lands (R. 223). Petitioner (Fred A. Burton) during the same period was employed by the trustee Browning to assist him in operating the companies (R. 189, 190).

May 12, 1942—The last payment in the amount of \$4,036.12, for royalties due for the use of said lands and leases for part of the month of February and including the last day of March, 1942, was transmitted to Burton by Browning, as Trustee (R. 223).

June 24, 1942—Respondents instituted this suit in the Circuit Court of Cook County, Illinois (R. 1).

## APPENDIX B.

### EXTRACTS FROM PLAN OF REORGANIZATION.

The Plan contemplates the sale by the Trustee of all of the tangible assets of the estates of the Burton Company, the Freeman Company and the Seymour Company, consisting of the real estate, leaseholds, mines, machinery, mining tipples, mining plants, buildings, power lines, railroad tracks, shafts, hoists, inventories, furniture, fixtures, cash, notes, evidences of indebtedness, deposits and accounts receivable to the Freeman Coal Mining Corporation, for Fifteen-Year Three Percent Sinking Fund Debentures in the principal amount of \$573,880.00 and 14,347 shares of no par value common stock of the Freeman Coal Mining Corporation, as set forth in Article VI of this Plan, and the sale by the Trustee of all the intangible assets contributed severally by the three Debtors,\* the permits, contracts, trademarks and good will, to the Freeman Coal Mining Corporation, for the sum of one dollar (R. 282).

### D. CLAIMS OF UNSECURED CREDITORS.

Each unsecured creditor whose allowed claim amounts to less than \$40.00 will receive the principal amount thereof in cash. Each unsecured creditor whose allowed claim exceeds \$40.00 in principal amount, will receive one share of common stock of no par value of the Freeman Coal Mining Corporation for each \$40.00 of principal amount of such claim, and Fifteen Year Three Percent Sinking Fund Debentures of the Freeman Coal Mining Corporation of the face value of \$40.00. No fractional shares will be issued and no debentures in multiples of less than \$40.00 face value will be issued. The amount of each allowed unsecured claim in excess of \$40.00, or

\*The punctuational and typographical errors have been corrected in accordance with the testimony of the Trustee J. Roy Browning (R. 216).

multiples thereof, remaining after the issuance of the securities shall be paid in cash (R. 289).

#### THE FREEMAN COAL MINING CORPORATION.

The securities to be issued to the Trustee by the Freeman Coal Mining Corporation, consisting of Fifteen Year Three Percent Sinking Fund Debentures in the principal amount of \$573,880.00, secured by a Collateral Trust Indenture to the Metropolitan Trust Company of Chicago, Illinois, and 14,347 shares of its no par value common stock, in payment of the purchase price, shall, upon the confirmation of this Plan by the court, be distributed by the Trustee among the unsecured creditors whose claims have been proven and allowed in these proceedings, in the manner provided in this plan (R. 293).

This Plan contemplates the liquidation and winding up of the affairs of the Burton Coal Company, the Seymour Coal Mining Company and the Freeman Coal Mining Company, and the ultimate dissolution of said companies (R. 293, 294).

The holders\* of the Preferred and Common stock of the Burton Company shall have the right to subscribe for shares in the Freeman Coal Mining Company, as provided in Paragraphs "E" and "F" of Article IV of this Plan. All of the cash obtained from the subscriptions, if any, of the holders of the Preferred and Common stock of the Burton Company shall be additional capital of the Freeman Coal Mining Corporation (R. 294).

The Freeman Coal Mining Corporation has been organized under the laws of the State of Illinois, with a paid-in capital of \$50,000.00 in cash, and if this Plan is accepted by the creditors and confirmed by the court, the Freeman Coal Mining Corporation will have the following capital structure:

##### Fifteen Year Three Percent. Debentures

Authorized .....	\$580,000.00
Outstanding .....	573,880.00

##### Common Stock No Par Value

Authorized .....	100,000 shares
Outstanding .....	64,347 shares

---

\*No subscription rights were exercised (R. 229).

All of the Debentures and 14,347 shares of the Common stock will be delivered to the Trustee in payment for the property and assets of the estates of the Debtors, to be transferred by the Trustee to the Freeman Coal Mining Corporation, and the Trustee will distribute the said Debentures and stock to the unsecured creditors. In addition to the Fifty Thousand (50,000) shares of the Common stock which has been heretofore subscribed and paid for in cash by the organizers of the Freeman Coal Mining Corporation, said corporation will issue sufficient additional shares to the holders of the Preferred and Common stock of the Burton Coal Company as shall be subscribed by said shareholders as provided in this Plan (R. 294).

The acceptance of this Plan by the shareholders and creditors of the Debtors, and the confirmation of this Plan by the court, shall be an acceptance of the offer of the Freeman Coal Mining Corporation to purchase from the Trustee the above mentioned property and assets of the Debtors, and the payment of said purchase price in the manner and by the means herein provided (R. 295).

Attached hereto as Exhibit "C" is a proforma balance sheet of the Freeman Coal Mining Corporation, after giving effect to the Provisions of this Plan, as shown by the Trustee's Balance Sheets of November 30, 1941, and before provisions have been made for the payment of any allowances hereafter made by the court for compensation and expenses in connection with these proceedings, which amounts the Freeman Coal Mining Corporation will assume and pay in cash (R. 295).

#### ARTICLE IX.

The Continental-Illinois National Bank and Trust Company of Chicago filed its claim for all the Burton Preferred stock and all the Burton Common stock. The court has allowed these claims. \* \* \* Claims of unsecured creditors in the amount of \$573,880.00 have been filed and allowed. The Continental-Illinois National Bank and Trust Company of Chicago has been allowed its general claim in the amount of \$368,240.78. The holder of the claims allowed to the Continental-Illinois National Bank and Trust Company of Chicago will, therefore, receive a

majority of the securities contemplated to be issued by this Plan (R. 298).

The Continental-Illinois National Bank and Trust Company of Chicago has entered into a contract with the Material Service Corporation of Chicago, Illinois, to assign and transfer to the Material Service Corporation all of the securities of the purchasing company that it may receive by reason of its allowed claims against the Debtors (R. 299).

## EXHIBIT "C" ATTACHED TO PLAN (R. 303).

**FREEMAN COAL MINING CORPORATION****PRO FORMA BALANCE SHEET**

(After giving effect to the provisions of the plan)

November 30, 1941

**ASSETS****CURRENT ASSETS:**

Cash in banks.....	\$ 93,387.31
Accounts receivable—trade .....	\$192,881.70
Accounts receivable—other .....	13,093.89
	<hr/>
	\$205,975.59
Less—Reserve for doubtful accounts..	2,277.12
	203,698.47
Cash deposits on bids and insurance .....	11,875.00
Inventory—coal .....	8,307.82
Inventory—supplies .....	8,153.90
	<hr/>
TOTAL CURRENT ASSETS .....	\$325,422.50

**FIXED ASSETS:**

Office equipment and automobiles.....	\$ 1,606.90
Mining plant and equipment .....	592,955.29
Coal land .....	5,000.00
	<hr/>
TOTAL FIXED ASSETS .....	599,562.19

PREPAID EXPENSES AND DEFERRED ITEMS.....	2,860.90
TOTAL ASSETS .....	<hr/> <b>\$927,845.59</b>

**LIABILITIES****CURRENT LIABILITIES:**

Accounts payable—trade .....	\$ 43,565.13
Accounts payable—sundry .....	521.73
Accruals—	
Payroll .....	39,196.37
Royalties .....	18,356.84
Social security tax .....	11,018.06
Compensation awards .....	7,504.80
Federal income taxes .....	40,774.06
Sundry .....	18,571.99
Preferred claims—taxes and wages .....	85,109.61
Claims pending .....	25,000.00
	<hr/>
TOTAL CURRENT LIABILITIES .....	\$289,618.59

FIFTEEN YEAR 3% DEBENTURES .....	573,880.00
----------------------------------	------------

**CAPITAL STOCK:**

Common stock—64,347 shares no par value .....	64,347.00
TOTAL LIABILITIES .....	<hr/> <b>\$927,845.59</b>

Note: No provision has been made in the above balance sheet for fees and allowances which may be made by the court in the reorganization proceedings.



*(D)* FILED

APR 30 1945

CHARLES EMMORE DROPLEY  
CLERK

IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1944

**No. 1147**

MARJORIE HAIR BURTON, INDIVIDUALLY AND AS  
ADMINISTRATRIX OF THE ESTATE OF FREDERIC A. BURTON,  
DECEASED,

*Petitioner,*

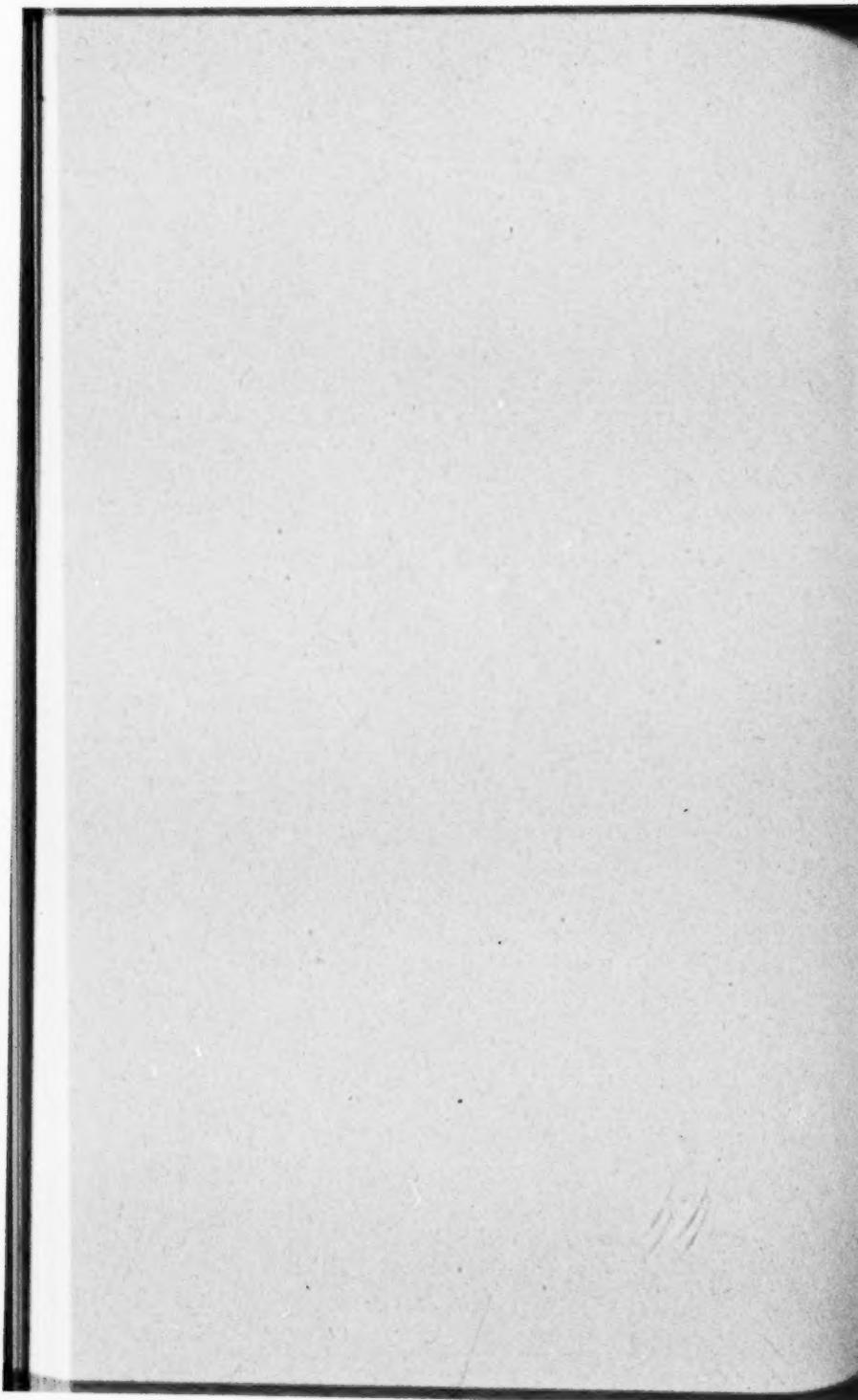
vs.

FREEMAN COAL MINING CORPORATION, A CORPORATION,  
WILLIAM J. KRUGLY AND MATERIAL SERVICE  
CORPORATION, A CORPORATION,

*Respondents.*

**BRIEF OF RESPONDENTS TO PETITION.**

HENRY S. BLUM,  
*Attorney for Respondents.*





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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1944

—  
**No. 1147**  
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MARJORIE HAIR BURTON, INDIVIDUALLY AND AS  
ADMINISTRATRIX OF THE ESTATE OF FREDERIC A. BURTON,  
DECEASED,

*Petitioner,*

vs.

FREEMAN COAL MINING CORPORATION, A CORPORATION,  
WILLIAM J. KRUGLY AND MATERIAL SERVICE  
CORPORATION, A CORPORATION,

*Respondents.*

**BRIEF OF RESPONDENTS TO PETITION.**

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**STATEMENT OF THE CASE.**

To correct the inaccuracies and omissions of the petitioner's Statement of the Case\*, which consists of a reference to **Summary and Short Statement of Matters Involved,\*\*** the respondents submit the following:

This is an action brought by respondents in the Circuit Court of Cook County, Illinois, as plaintiffs in equity to impress a trust in favor of the Freeman Coal Mining Corporation, one of the respondents, on the lands described in

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\* P. 2 of brief in support of petition.

\*\* Petition for writ of certiorari, p. 2.

the complaint title to which was alleged to be in the name of Fred A. Burton, one of the petitioners (Rec. 27). The Freeman Coal Mining Corporation claimed as the grantee and successor in interest of one J. Roy Browning, Trustee appointed for the estate and property of the Burton Coal Company in proceedings under Chapter X of the Bankruptcy Act of the United States. The decree of the Circuit Court found the Freeman Coal Mining Corporation to be such grantee and successor in interest and such decree was affirmed by the Supreme Court of Illinois.

The Illinois Courts decided that Fred A. Burton was, prior to the institution of the proceedings to reorganize the Burton Coal Company, its president and while holding that office (Rec. 342) unlawfully took his company's money and bought with that money real estate for himself and his wife, Marjorie Hair Burton (Rec. 342). This the Illinois courts held to be in fraud of the rights of the Burton Coal Company, its creditors and shareholders and held the Burtons to be trustees for the Freeman Coal Mining Company, the successor in interest of the defrauded Company.

Subsequent to the purchase of the lands in question by Burton with his Company's funds, proceedings were instituted in the District Court of the United States for the Northern District of Illinois for the reorganization of the Burton Coal Company and its wholly owned subsidiaries, the Seymour Coal Mining Company and the Freeman Coal Mining Company (Rec. 342). It is in these proceedings that J. Roy Browning was appointed Trustee.

The proceedings to reorganize the Burton Coal Company were filed on September 9, 1938. The matter remained pending, and on January 15, 1942, a plan of reorganization was filed (Rec. 275) which was approved on February 4, 1942 (Rec. 305) and was thereafter duly consummated. The plan of reorganization dealt with "all the

estate and property of the Burton Coal Company, debtor, including therein, without limiting the generality of the foregoing \* \* \* and all tangible and intangible property of the estate of the Burton Coal Company." (Rec. 295.) All liabilities and obligations of the debtor and Trustee were dealt with by the plan (Rec. 283). After providing for the payment in full in cash of all costs and expenses of the proceedings and all claims for wages entitled to priority in payment (Rec. 284),<sup>28</sup> the plan made provision for every class of obligation according to their respective priorities (Rec. 285-9). The stockholders of the corporations received nothing except that as to Burton Coal Company, the common and preferred stockholders were given the right to subscribe to the capital stock of the new company (Rec. 290).

Pursuant to this plan and when consummated, the Freeman Coal Mining Corporation became grantee of and acquired the lands under consideration which up to the time of such conveyance were being mined by the Trustee, Browning (Rec. 195, 314). The Freeman Coal Mining Corporation was on the consummation of the plan of reorganization placed in physical possession of the lands described in the complaint and was so in possession at the time the complaint was filed seeking to establish its rights to the tract of land in question—said lands being a part of the property acquired by it pursuant to the plan of reorganization.

The general creditors of the Burton Coal Company and its wholly owned subsidiaries received no money under the plan of reorganization. The consideration moving to the unsecured creditors (Rec. 289, par. D) was the delivery to them of 15-year 3% sinking fund debentures of the Freeman Coal Mining Corporation for the principal amount of their claims together with one share of common stock of no par value of the Freeman Coal Mining Corporation

for each \$40 of the principal amount of such claims. The effect of the reorganization was to move out of the Trustee to the Freeman Coal Mining Corporation all of the assets and property of the Estate having value and evidencing the claims of the creditors entitled to distribution by the notes and stock of the reorganized company.

Upon the confirmation and consummation of the plan of reorganization, nothing more remained to be done to close the estate except the discharge of the Trustee and the entry of a final decree (Bankruptcy Act, 1938, Chap. X, Sec. 228). The administration of the estate in bankruptcy had been concluded.

#### SUMMARY OF THE ARGUMENT.

The petition and the brief in support thereof assume that the lands involved in this lawsuit were, at the time the respondent commenced the action upon which the decree complained of is based, a part of an estate in bankruptcy; that the decree complained of is an interference with the administration of an estate in bankruptcy by independent action.

This assumption is contrary to the record. The lands in question and all the rights of the bankruptcy trustee therein had been conveyed pursuant to the plan of reorganization and the orders of the bankruptcy court before the commencement of the present action by the Freeman Coal Mining Corporation, respondent.

**ARGUMENT.**

In the first paragraph of the petition for certiorari the petitioner asks:

"that a writ of certiorari issue to review a final decree of the Supreme Court of Illinois \*\*\* which \*\*\* decided that the Circuit Court of Cook County, Illinois, without authorization of the bankruptcy court, had jurisdiction to collect and direct the distribution of property which it determined constituted an asset of a debtor, whose estate was being administered by a court of bankruptcy under Chapter X of the Bankruptcy Act."\*

The petitioner upon the foregoing premise proceeds to argue that the bankruptcy court having exclusive jurisdiction of the debtor and its property wherever located, this asserted jurisdiction by the State Court over the lands in the pending lawsuit was error to be corrected by this Court.

The petition and the petitioner's brief both proceed upon the assumption that the lands in question were a part of an estate in bankruptcy in the course of administration; that there was an estate in bankruptcy pending with a trustee in possession administering the estate having a right remaining in him that he might have asserted in the proper forum against the lands.

This premise is contrary to the facts in the record. There was no estate in bankruptcy in the course of administration. The Trustee in bankruptcy had conveyed the property out pursuant to a plan of reorganization the

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\* P. 2, Petition for writ of certiorari.

effect of which plan was to substitute the notes and securities of the Freeman Coal Mining Corporation for the claims filed and allowed in bankruptcy. The lands in question had been conveyed along with all other lands and tangible property of the Burton Coal Company and its subsidiaries to the Freeman Coal Mining Corporation.

The administration of the estate was at an end. Nothing remained except the formal order of discharge of the trustee and the entry of the final decree in the case (Bankruptcy Act of 1938, Sec. 228).

That the foregoing are the contentions of petitioner-made in disregard of obvious facts as they appear in the record and as found by the state court, appears from "**Questions Presented**"\* by the petition. By question No. 1, petitioner presents the inquiry whether a court of bankruptcy, whose jurisdiction has been invoked, is given exclusive jurisdiction over all the assets and property of a debtor and the distribution thereof as it directs. The answer to this question may well be given in the affirmative without any comfort to the petitioner. Having been given exclusive jurisdiction over all the property and assets of the Burton Coal Company by the proceedings to reorganize, the bankruptcy court, pursuant to a plan of reorganization duly accepted by the required percentage of a creditors and confirmed by the court, authorized and directed its trustee to convey out the lands in question together with all other tangible property of the Burton Coal Company to the Freeman Coal Mining Corporation. J. Roy Browning, Trustee, thus authorized and directed upon the consummation of the plan, parted with title and possession to the lands in question and placed both in the Freeman Coal Mining Corporation, this plaintiff-respondent. The contention that the jurisdiction over the property so

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\* Petition, p. 9.

conveyed continues in the bankruptcy court, and that the trustee who has divested himself of title has notwithstanding his conveyance the sole right to commence an action with respect thereto, has no basis whatsoever in law.

In the Questions Presented No. 2,\* we find the same misconception:

"Whether suits to recover assets belonging to a debtor estate must be brought by or in the name of the Trustee under the direction of the Bankruptcy Court?"

This question ignores the fact that when this suit was instituted the lands in question no longer belonged to the debtor estate. They had been conveyed by the Trustee pursuant to the plan of reorganization. That appears from the reading of the plan (Rec. 291-2), from the findings of the master in chancery of the Circuit Court to whom the cause was referred,\*\* and the opinion of the Supreme Court of the State of Illinois affirming the decree of the Circuit Court of Cook County (Rec. 342).

The third question posed by the petitioner, whether a confirmed plan of reorganization is conclusive and binding upon the parties and the property in the estate, is answered by the express language of the Act (Bankruptcy Act of 1938, Chap. X, Sec. 224(1)). The answer to that is in the affirmative. We are unable to see and nothing appears in the petition or the brief to indicate in what way the answer to this question becomes a basis for the granting of the writ. The question is wholly irrelevant to the matters raised by the petition.

The cases cited by the petitioner that have any bearing at all on the questions raised by the petition deal with estates

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\* Petition for Certiorari, p. 9.

\*\* No objections or exceptions to this finding of the Master were filed by petitioners.

pending in bankruptcy and were in each instance attempts to interfere with the administration of the estate in bankruptcy (*Groshenour v. George & Francis Ball Foundation et al.*, 35 Fed. Supp. 566; *Prudence Realization Co. v. Geist*, 316 U.S. 89).

A court of bankruptcy loses jurisdiction over the reorganized company or the property acquired by it after the confirmation of a plan of reorganization under Chap. X of the Bankruptcy Act.

*Re Ambassador Hotel Corporation*, 124 Fed. 2d 435;

*Flatbush Ave.-Nevins St. Corporation*, 133 Fed. 2d, 760.

Summarizing—the equitable title to the property involved in this case vested in the Freeman Coal Mining Corporation under the plan of reorganization and the instruments of conveyance executed to consummate this plan (Bankruptcy Act of 1938, Sec. 70(I)). Browning, the Trustee who had prior to the consummation of the plan of reorganization been mining the land, delivered possession to the Freeman Coal Mining Corporation, which was in possession and mined the land from that time forward. All this before this action was brought in the Circuit Court of Cook County.

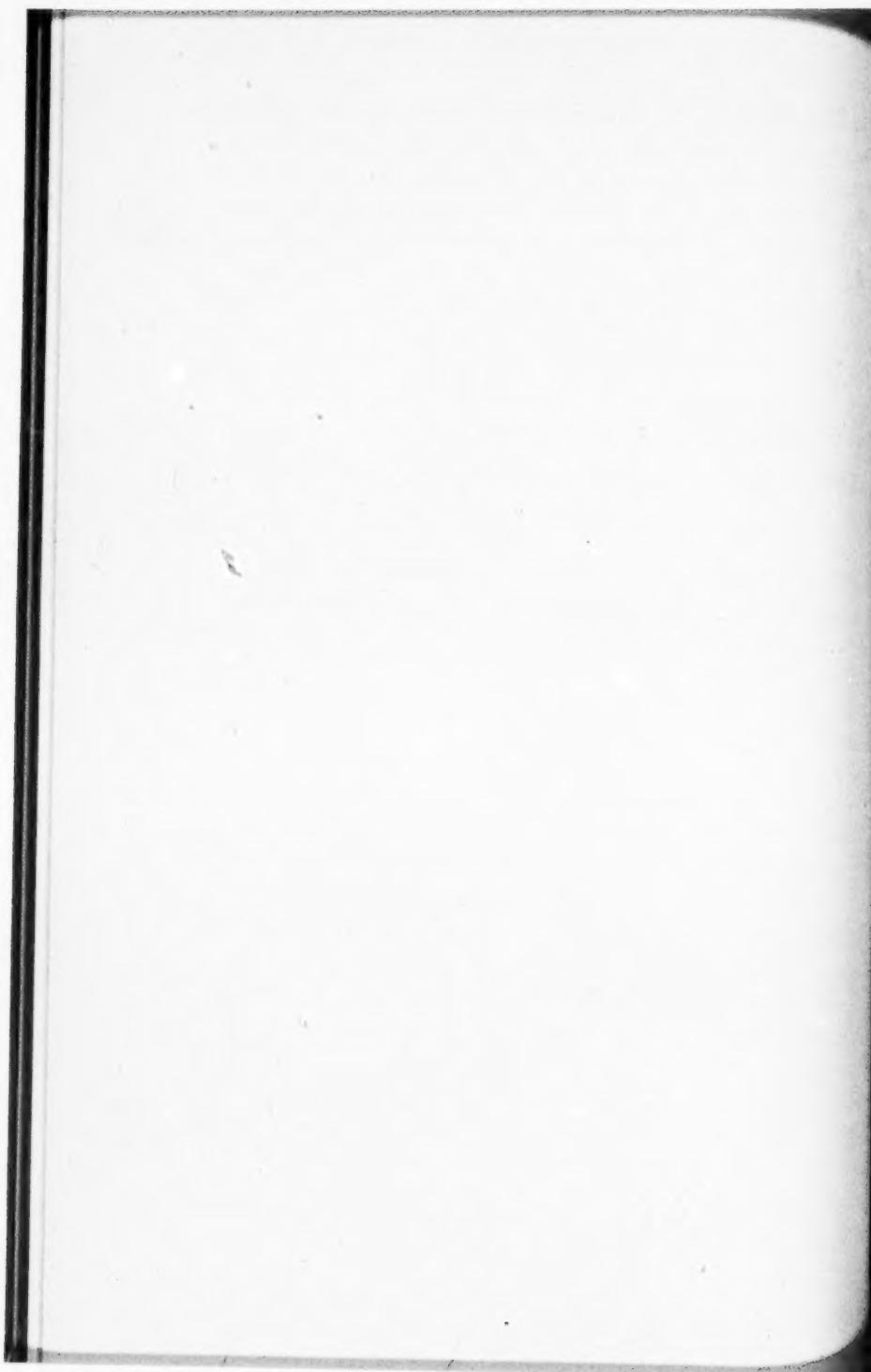
The suit instituted by respondents was no interference with an estate in bankruptcy in the course of administration. There was no longer any estate in bankruptcy in the course of administration. The matter was closed by the confirmation and consummation of the plan of reorganization leaving nothing except the formal steps required to discharge the trustee and close the case. The facts were so found by the state courts. This court will not go behind the determination of these facts by the state court. (*Milkwagon Drivers' Union v. Meadowmoor Dairies, Inc.*,

312 U. S. 287). Independent of these findings by the state courts, the record establishes these matters beyond any possible controversy and proves vesting of the equitable title to these lands in the Freeman Coal Mining Corporation and the delivery of possession to it concurrently with the consummation of the plan. These lands passing out of the estate left the jurisdiction of the bankruptcy court and the grantee, the successor in interest to the Burton Coal Company and to the trustee, Browning was relegated to the forum having jurisdiction over titles to real estate within the State of Illinois.

The petition for certiorari should be denied.

Respectfully submitted,

HENRY S. BLUM,  
*Attorney for Respondents.*



# Supreme Court

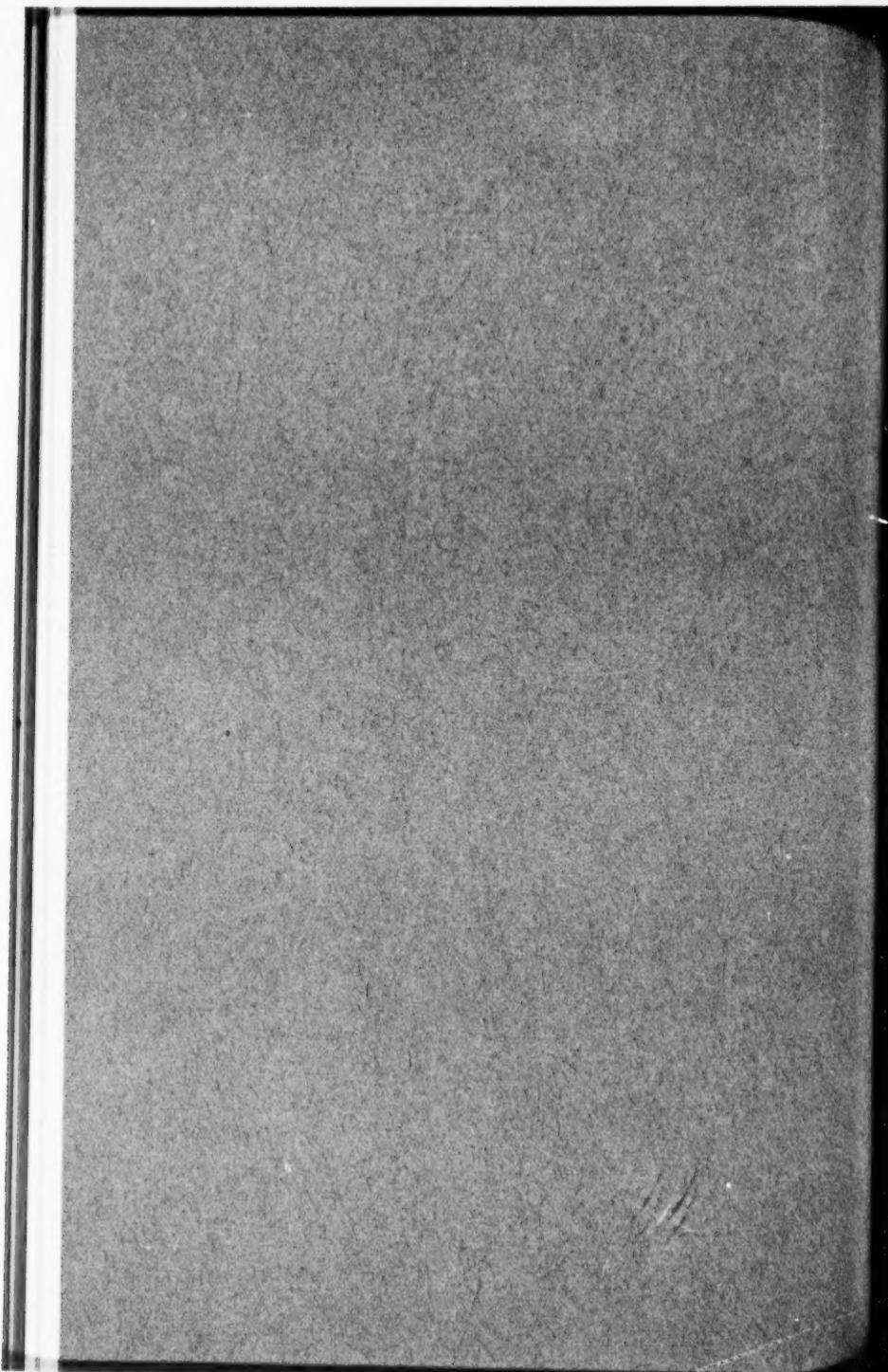
MARJORIE  
administration  
deceased.

FREEMAN COAL MINING  
ration; WILLIAM J. FISHER,  
SERVICE CORPORATION

Barbara

John

CHARLES H. BURMAN,  
*Of Counsel*



IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1944

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**No. 1147**

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MARJORIE HAIR BURTON, individually and as  
administratrix of the estate of Frederic A. Burton,  
deceased,

*Petitioner,*

*vs.*

FREEMAN COAL MINING CORPORATION, a corpora-  
tion, WILLIAM J. KRUGLY and MATERIAL  
SERVICE CORPORATION, a corporation,

*Respondents.*

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## **REPLY BRIEF OF PETITIONER**

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The federal question presented by the petition is primarily the construction of subparagraph 13 of Section 216 of the Bankruptcy Act.

The Plan of Reorganization of the Burton Coal Company did not deal with a claim against petitioner. Such a claim is not mentioned anywhere in the proceedings to reorganize the Burton Coal Company. If a claim against petitioner ever existed then the mandatory provision of

subparagraph 13 of Section 216 of the Bankruptcy Act required that the plan provide for the retention and enforcement of such claim by the Trustee. Subparagraph 13 of Section 216 limits the enforcement of such claims solely to the trustee who under Chapter X of the Bankruptcy Act is required to be a disinterested trustee. Section 216 conjoined with subparagraph 3 of Section 167 of the Bankruptcy Act was intended to preclude the possibility of what occurred in this case.

J. Roy Browning, the Trustee in the proceedings to reorganize the Burton Coal Company, has never asserted a claim against petitioner.

On the contrary the Trustee Browning paid petitioner \$22,451.16 as royalties for the coal mined from petitioner's lands and leases. Said payments covered the entire period of Browning's trusteeship up to the date of the consummation of the Plan of Reorganization (R. 222, 223, Petition p. 3).

After the plan had been consummated (April 1, 1942, R. 217, 218) respondents brought this suit (June 24, 1942, R. 1) against petitioner alleging that a right of action existed in favor of the Burton Coal Company its stockholders and creditors and asking that the respondents, or one or more of them, be declared successors in interest to the said Burton Coal Company (R. 12, pars. (a) (b)). There is nothing in the record to show that the Trustee assigned such a right of action to the respondents or either of them. There is no order of the Bankruptcy Court authorizing the Trustee to make such an assignment. The Plan of Reorganization nowhere states that the debtor Burton Coal Company had such a right of action against petitioner. That these circumstances could give the Illinois state court jurisdiction of the estate of the debtor Burton Coal Company is inconceivable.

At the time the Trustee Browning effected the transfer of the debtor's property he became president of the transferee company, Freeman Coal Mining Corporation (R. 217, 218).

It is strange law that would permit respondent Freeman Coal Mining Corporation to appropriate petitioner's lands because the Federal Trustee ignored the statutory requirements of the Bankruptcy Act.

The respondents seek to confuse the issue here presented by misleading and fallacious statements.

At page 6 of the brief respondents say:

"Having been given exclusive jurisdiction over all the property and assets of the Burton Coal Company by the proceedings to reorganize, the bankruptcy court \* \* \* authorized and directed its trustee to convey out the lands in question together with all other tangible property of the Burton Coal Company to the Freeman Coal Mining Corporation. J. Roy Browning, Trustee, thus authorized and directed upon the consummation of the plan, parted with title and possession to the lands in question and placed both in the Freeman Coal Mining Corporation, this plaintiff-respondent."

There is no page reference to the printed record for this statement for the reason the record repudiates the notion. If Browning, the Trustee, had title to the land and conveyed it to Respondent Freeman Coal Mining Corporation, there would be no necessity or reason for this suit. The recklessness of Respondents' statement is made manifest by their own description of the nature of the suit. Respondents say at page 1 of their brief:

"This is an action brought by respondents in the Circuit Court of Cook County, Illinois, as plaintiffs in equity to impress a trust in favor of the Freeman Coal Mining Corporation, one of the respondents, on

the lands described in the complaint title to which was alleged to be in the name of Fred A. Burton, one of the petitioners (Rec. 27)."

At page 8 of their brief Respondents say:

"The suit instituted by respondents was no interference with an estate in bankruptcy in the course of administration."

If a cause of action was available to the estate of the Burton Coal Company, as the Respondents claim, then the suit instituted by Respondents in the Illinois state court was an interference with the administration of an estate by the Bankruptcy Court. See. 216 (13) of the Bankruptcy Act.

In addition the Bankruptcy Court retained jurisdiction of the proceedings to reorganize the Burton Coal Company, as follows:

"(f) Generally to determine any and all matters pertaining to this proceeding or to the Plan and not determined heretofore or by this order, and to make from time to time such further or other order or orders as this Court may deem just and proper in the exercise of the jurisdiction and powers conferred upon it by Chapter X of the Bankruptcy Act" (R. 309, 310).

In fact, but *dehors* the record, the order confirming the Plan of Reorganization entered by the Judge of the Bankruptcy Court in said proceedings and now on file in the U. S. District Court clerk's office in Chicago, Illinois, contains an additional paragraph (g) which respondents inadvertently overlooked when they substituted a conformed copy of said order in lieu of the original order which was introduced upon the hearing before the Master. Said paragraph (g) reads as follows:

"(g) With respect to any assets or property title

to which still remains in the Trustee, to determine all questions and adjudicate the rights of all claimants with respect thereto and make such disposition or distribution thereof as the interests of all parties shall require and as shall appear proper."

It is signed by Charles E. Woodward, Judge, is dated March 27, 1942, and examined and approved by Victor E. LaRue, Special Master, March 26, 1942.

This case we believe presents a matter of compelling importance to the administration of the Bankruptcy laws.

Respectfully submitted,

JOHN J. DOWDLE,  
*Attorney for Petitioner.*

CHARLES H. BORDEN,  
*Of Counsel.*